

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

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| IN THE MATTER OF THE APPLICATION OF BULLDOG COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 8153-M1 | AQB 21-31 |
| JAYHAWK COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 8152-M1 | AQB 21-32 |
| LONGHORN COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 8349-M2 | AQB 21-33 |
| COWBOY CDP (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 7877-M1 | AQB 21-34 |
| WILDCAT COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 7474-M2 | AQB 21-35 |
| MAVERICK COMPRESSOR STATION (XTO) FOR AN AIR QUALITY PERMIT, NO. 7565-M2 | AQB 21-39 |
| SPARTAN COMPRESSOR STATION (XTO) FOR AN AIR QUALITY PERMIT, NO. 7681-M2 | AQB 21-40 |
| TIGER COMPRESSOR STATION (XTO) FOR AN AIR QUALITY PERMIT, NO. 7623-M2 | AQB 21-41 |

**WILDEARTH GUARDIANS' ERRATA TO CLOSING ARGUMENT AND
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

At the direction of the Hearing Officer, WildEarth Guardians files this Errata to its Closing Argument and Findings of Fact and Conclusions of Law that was filed in this matter on December 3, 2021. This Errata is being filed and served to translate the citations in Guardians' Closing Argument into its Proposed Findings of Fact and Conclusions of Law.

The corrections are identified in red below:

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1. The Applicant, XTO Energy, Inc., filed Application 8153M1 with the Department on September 25, 2020. **NMED Amended Exh. 21 at 2.**
2. According to the proposed permit, the Applicant would be authorized to increase emissions from the Bulldog Compressor Station of nitrogen oxides and of volatile organic compounds, among other pollutants. **21-31_AR246.**
3. The Department published the Department's legal notice for the proposed permit in the Carlsbad Current Argus on October 27, 2020, initiating a 30-day comment period. **NMED Amended Exh. 21 at 3.**
4. Guardians submitted a timely public comment letter on November 24, 2020, raising issues of concern and requesting a public hearing. **21-31_AR333-340.**
5. The Department released a copy of the draft permit and the draft Statement of Basis for the proposed permit related to the Bulldog facility on May 28, 2021, initiating the second public comment period. **NMED Amended Exh. 21 at 3.**
6. Guardians submitted a second set of timely public comments on June 28, 2021, renewing the concerns it raised in its first comment letter, raising new concerns, and requesting a public hearing. **21-31_AR341-346.**

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Application 8153M1. ***New Mexico Environment Department, Public Hearing Request Determination for WEG Related Permit Applications (Feb. 11, 2021).***

8. On June 24, 2021, the Cabinet Secretary appointed Gregory Chakalian to serve as Hearing Officer in AQB 21-31. ***Notice of Hearing and Appointment of Hearing Officer, AQB 21-31 (Jun. 24, 2021).***
9. On July 7, 2021, the parties attended a virtual scheduling conference, where, among other things, the Hearing Officer determined to consolidate the public hearing regarding issues related to AQB 21-31 with nine other public hearings authorized by the Cabinet Secretary to address issues related to nine separate proposed air quality permits. ***Scheduling Order, AQB 21-31 et al. (Jul. 20, 2021).***

10. At the request of the Hearing Officer, on August 2, 2021 the parties filed legal briefs addressing whether the public hearing may be held virtually. On August 6, 2021, the Hearing Officer issued an order finding that 20.2.72.306.C NMAC does not prohibit a virtual public hearing but directing the Department to provide a public space in which members of the public can view and participate in the virtual hearing. *Order Amending Scheduling Order, AQB 21-31 et al. (Aug. 6, 2021).*

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or contribute” to a violation of the ozone NAAQS based on the current ambient air quality in the counties. *Joint Motion in Limine, AQB 21-31 et al. (Oct. 12, 2021).*

13. On October 25, 2021, the first day of the hearing, the Hearing Officer issued an oral order granting the Applicant’s Joint Motion in Limine on the basis that “[t]he [Environment] Department has no authority or discretion to deny a permit or require offsets for an individual new or modified minor source in a designated attainment area on the basis that the facility will cause or contribute to ozone levels above the NAAQS,” (citing Final Order EIB Case No. 20-21 and 20-33), and that, therefore, testimony and evidence regarding whether the proposed permit would exceed the ozone NAAQS is irrelevant. *Day 1 Transcript at 40, 61-63.*

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19. Due to COVID-19, New Mexico has been in a declared state of emergency since March 11, 2020. *N.M. Exec. Order No. 2021-044 (Jul. 23, 2021).*
21. Partly responding to the public health emergency created by COVID-19, the Department revised and republished its legal notices for other construction permit applications, to include instructions for electronic public comment submission, but the Department did not revise and republish its legal notice for Application 8153M1. *Day 1 Transcript at 222, 224, 235.*

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26. NMED Policy 07-13 is the Department’s policy regarding public participation. *See New Mexico Environment Department, Policy 07-13: Public Participation (Feb. 6, 2018).*
27. There is no language in NMED Policy 07-13 that refers to or addresses New Mexico Executive Order 2005-056. *Id.*

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36. A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm’n*, 133 N.M. 97, 104.

42. Permit limitations established in an air quality construction permit issued pursuant to an EPA-approved State Implementation Plan must be practically enforceable. *See U.S. EPA, Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits (Jan. 25, 1995) at 5.*
43. EPA guidance sets out three primary enforceability criteria which a source-specific permit must meet to make the permit limitations enforceable as a practical matter, including: (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping and reporting. *Id. at 6.*
45. A permit limitation that is not practically enforceable violates the federal Clean Air Act, and the Department should, therefore, deny the permit application. *NMSA 1978, § 74-2-7.C(1)(a).*

1. The Applicant, XTO Energy, Inc., filed Application 8152M1 with the Department on September 30, 2020. *NMED Exh. 31 at 3.*
2. According to the proposed permit, the Applicant would be authorized to increase emissions from the Jayhawk Compressor Station of nitrogen oxides and of volatile organic compounds, among other pollutants. *21-32_AR433.*
3. The Department published the Department's legal notice for the proposed permit in the Hobbs News-Sun on November 3, 2020, initiating a 30-day comment period. *NMED Exh. 31 at 3.*
4. Guardians submitted a timely public comment letter on December 3, 2020, raising issues of concern and requesting a public hearing. *21-32_AR575-582.*
5. The Department released a copy of the draft permit and the draft Statement of Basis for the proposed permit related to the Jayhawk facility on May 28, 2021, initiating the second public comment period. *NMED Exh. 31 at 6.*
6. Guardians submitted a second set of timely public comments on June 28, 2021, renewing the concerns it raised in its first comment letter, raising new concerns, and requesting a public hearing. *21-32_AR583-588.*

Application 8152M1. *Public Hearing Request Determination for WEG Related Permit Applications (Feb. 11, 2021).*

8. On June 24, 2021, the Cabinet Secretary appointed Gregory Chakalian to serve as Hearing Officer in AQB 21-32. [Notice of Hearing and Appointment of Hearing Officer, AQB 21-32 \(Jun. 24, 2021\)](#).
9. On July 7, 2021, the parties attended a virtual scheduling conference, where, among other things, the Hearing Officer determined to consolidate the public hearing regarding issues related to AQB 21-32 with nine other public hearings authorized by the Cabinet Secretary to address issues related to nine separate proposed air quality permits. [Scheduling Order, AQB 21-31 et al. \(Jul. 20, 2021\)](#).
10. At the request of the Hearing Officer, on August 2, 2021 the parties filed legal briefs addressing whether the public hearing may be held virtually. On August 6, 2021, the Hearing Officer issued an order finding that 20.2.72.306.C NMAC does not prohibit a virtual public hearing but directing the Department to provide a public space in which members of the public can view and participate in the virtual hearing. [Order Amending Scheduling Order, AQB 21-31 et al. \(Aug. 6, 2021\)](#).

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or contribute” to a violation of the ozone NAAQS based on the current ambient air quality in the counties. [Joint Motion in Limine, AQB 21-31 et al. \(Oct. 12, 2021\)](#).

13. On October 25, 2021, the first day of the hearing, the Hearing Officer issued an oral order granting the Applicant’s Joint Motion in Limine on the basis that “[t]he [Environment] Department has no authority or discretion to deny a permit or require offsets for an individual new or modified minor source in a designated attainment area on the basis that the facility will cause or contribute to ozone levels above the NAAQS,” (citing Final Order EIB Case No. 20-21 and 20-33), and that, therefore, testimony and evidence regarding whether the proposed permit would exceed the ozone NAAQS is irrelevant. [Day 1 Transcript at 40, 61-63](#).

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19. Due to COVID-19, New Mexico has been in a declared state of emergency since March 11, 2020. [N.M. Exec. Order No. 2021-044 \(Jul. 23, 2021\)](#).
21. Partly responding to the public health emergency created by COVID-19, the Department revised and republished its legal notices for other construction permit applications, to include instructions for electronic public comment submission, but the Department did not revise and republish its legal notice for Application 8152M1. [Day 1 Transcript at 222, 224, 235](#).

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26. NMED Policy 07-13 is the Department’s policy regarding public participation. [See New Mexico Environment Department, Policy 07-13: Public Participation \(Feb. 6, 2018\)](#).

36. A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n*, 133 N.M. 97, 104.

42. Permit limitations established in an air quality construction permit issued pursuant to an EPA-approved State Implementation Plan must be practically enforceable. *See U.S. EPA, Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits* (Jan. 25, 1995) at 5.
43. EPA guidance sets out three primary enforceability criteria which a source-specific permit must meet to make the permit limitations enforceable as a practical matter, including: (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping and reporting. *Id.* at 6.
45. A permit limitation that is not practically enforceable violates the federal Clean Air Act, and the Department should, therefore, deny the permit application for the Jayhawk facility. *NMSA 1978, § 74-2-7.C(1)(a).*

1. The Applicant, XTO Energy, Inc., filed Application 8349M2 with the Department on September 30, 2020. *NMED Amended Exh. 22 at 2.*
2. According to the proposed permit, the Applicant would be authorized to increase emissions from the Longhorn Compressor Station of nitrogen oxides and of volatile organic compounds, among other pollutants. *21-33_AR226.*
3. The Department published the Department's legal notice for the proposed permit in the Carlsbad Current Argus on November 3, 2020, initiating a 30-day comment period. *NMED Amended Exh. 22 at 3.*
4. Guardians submitted a timely public comment letter on December 3, 2020, raising issues of concern and requesting a public hearing. *21-33_AR312-883.*
5. The Department released a copy of the draft permit and the draft Statement of Basis for the proposed permit related to the Longhorn facility on May 28, 2021, initiating the second public comment period. *NMED Amended Exh. 22 at 3.*
6. Guardians submitted a second set of timely public comments on June 28, 2021, renewing the concerns it raised in its first comment letter, raising new concerns, and requesting a public hearing. *21-33_AR884-889.*

Application 8349M2. *New Mexico Environment Department, Public Hearing Request Determination for WEG Related Permit Applications* (Feb. 11, 2021).

8. On June 24, 2021, the Cabinet Secretary appointed Gregory Chakalian to serve as Hearing Officer in AQB 21-33. *Notice of Hearing and Appointment of Hearing Officer, AQB 21-33* (Jun. 24, 2021).
9. On July 7, 2021, the parties attended a virtual scheduling conference, where, among other things, the Hearing Officer determined to consolidate the public hearing regarding issues related to AQB 21-33 with nine other public hearings authorized by the Cabinet Secretary to address issues related to nine separate proposed air quality permits. *Scheduling Order, AQB 21-31 et al.* (Jul. 20, 2021).
10. At the request of the Hearing Officer, on August 2, 2021 the parties filed legal briefs addressing whether the public hearing may be held virtually. On August 6, 2021, the Hearing Officer issued an order finding that 20.2.72.306.C NMAC does not prohibit a virtual public hearing but directing the Department to provide a public space in which members of the public can view and participate in the virtual hearing. *Order Amending Scheduling Order, AQB 21-31 et al.* (Aug. 6, 2021).

or contribute” to a violation of the ozone NAAQS based on the current ambient air quality in the counties. *Joint Motion in Limine, AQB 21-31 et al.* (Oct. 12, 2021).

13. On October 25, 2021, the first day of the hearing, the Hearing Officer issued an oral order granting the Applicant’s Joint Motion in Limine on the basis that “[t]he [Environment] Department has no authority or discretion to deny a permit or require offsets for an individual new or modified minor source in a designated attainment area on the basis that the facility will cause or contribute to ozone levels above the NAAQS,” (citing Final Order EIB Case No. 20-21 and 20-33), and that, therefore, testimony and evidence regarding whether the proposed permit would exceed the ozone NAAQS is irrelevant. *Day 1 Transcript at 40, 61-63.*
18. The Department accepted WildEarth Guardians’ public comments related to Application 8349M2, which were submitted electronically. 21-33_AR312-883, 884-889.

19. Due to COVID-19, New Mexico has been in a declared state of emergency since March 11, 2020. *N.M. Exec. Order No. 2021-044* (Jul. 23, 2021).
21. Partly responding to the public health emergency created by COVID-19, the Department revised and republished its legal notices for other construction permit applications, to

include instructions for electronic public comment submission, but the Department did not revise and republish its legal notice for Application 8349M2. *Day 1 Transcript at 222, 224, 235.*

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26. NMED Policy 07-13 is the Department's policy regarding public participation. *See New Mexico Environment Department, Policy 07-13: Public Participation (Feb. 6, 2018).*

27. There is no language in NMED Policy 07-13 that refers to or addresses New Mexico Executive Order 2005-056. *Id.*

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35. A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n*, 133 N.M. 97, 104.

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42. Permit limitations established in an air quality construction permit issued pursuant to an EPA-approved State Implementation Plan must be practically enforceable. *See U.S. EPA, Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits (Jan. 25, 1995) at 5.*

43. EPA guidance sets out three primary enforceability criteria which a source-specific permit must meet to make the permit limitations enforceable as a practical matter, including: (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping and reporting. *Id. at 6.*

45. A permit limitation that is not practically enforceable violates the federal Clean Air Act, and the Department should, therefore, deny the permit application for the Longhorn facility. *NMSA 1978, § 74-2-7.C(1)(a).*

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1. The Applicant, XTO Energy, Inc., filed Application 7877M1 with the Department on April 29, 2020. *NMED Amended Exh. 27 at 3.*
2. According to the proposed permit, the Applicant would be authorized to increase emissions from the Cowboy Central Delivery Point of nitrogen oxides and of volatile organic compounds, among other pollutants. *21-34_AR871.*

3. The Department published the Department's legal notice for the proposed permit in the Carlsbad Current Argus on June 2, 2020, initiating a 30-day comment period. **NMED Amended Exh. 27 at 4.**
4. Guardians submitted a timely public comment letter on June 20, 2020, raising issues of concern and requesting a public hearing. **21-34_AR890-893.**
5. The Department released a copy of the draft permit and the draft Statement of Basis for the proposed permit related to the Cowboy facility on February 23, 2021, initiating the second public comment period. **NMED Amended Exh. 27 at 4.**
6. Guardians submitted a second set of timely public comments on March 25, 2021, renewing the concerns it raised in its first comment letter, raising new concerns, and requesting a public hearing. **21-34_AR3264-3270.**

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7877M1. **New Mexico Environment Department, *Public Hearing Request Determination for WEG Related Permit Applications* (Jun. 1, 2021).**

8. On June 24, 2021, the Cabinet Secretary appointed Gregory Chakalian to serve as Hearing Officer in AQB 21-34. **Notice of Hearing and Appointment of Hearing Officer, AQB 21-34 (Jun. 24, 2021).**
9. On July 7, 2021, the parties attended a virtual scheduling conference, where, among other things, the Hearing Officer determined to consolidate the public hearing regarding issues related to AQB 21-34 with nine other public hearings authorized by the Cabinet Secretary to address issues related to nine separate proposed air quality permits. **Scheduling Order, AQB 21-31 et al. (Jul. 20, 2021).**
10. At the request of the Hearing Officer, on August 2, 2021 the parties filed legal briefs addressing whether the public hearing may be held virtually. On August 6, 2021, the Hearing Officer issued an order finding that 20.2.72.306.C NMAC does not prohibit a virtual public hearing but directing the Department to provide a public space in which members of the public can view and participate in the virtual hearing. **Order Amending Scheduling Order, AQB 21-31 et al. (Aug. 6, 2021).**

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or contribute" to a violation of the ozone NAAQS based on the current ambient air quality in the counties. **Joint Motion in Limine, AQB 21-31 et al. (Oct. 12, 2021).**

13. On October 25, 2021, the first day of the hearing, the Hearing Officer issued an oral order granting the Applicant's Joint Motion in Limine on the basis that "[t]he [Environment] Department has no authority or discretion to deny a permit or require offsets for an individual new or modified minor source in a designated attainment area on the basis that

the facility will cause or contribute to ozone levels above the NAAQS,” (citing Final Order EIB Case No. 20-21 and 20-33), and that, therefore, testimony and evidence regarding whether the proposed permit would exceed the ozone NAAQS is irrelevant. *Day 1 Transcript at 40, 61-63.*

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19. Due to COVID-19, New Mexico has been in a declared state of emergency since March 11, 2020. *N.M. Exec. Order No. 2021-044 (Jul. 23, 2021).*

21. Partly responding to the public health emergency created by COVID-19, the Department revised and republished its legal notices for other construction permit applications, to include instructions for electronic public comment submission, but the Department did not revise and republish its legal notice for Application 7877M1. *Day 1 Transcript at 222, 224, 235.*

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26. NMED Policy 07-13 is the Department’s policy regarding public participation. *See New Mexico Environment Department, Policy 07-13: Public Participation (Feb. 6, 2018).*

27. There is no language in NMED Policy 07-13 that refers to or addresses New Mexico Executive Order 2005-056. *Id.*

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33. A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm’n*, 133 N.M. 97, 104.

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42. Permit limitations established in an air quality construction permit issued pursuant to an EPA-approved State Implementation Plan must be practically enforceable. *See U.S. EPA, Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits (Jan. 25, 1995) at 5.*

43. EPA guidance sets out three primary enforceability criteria which a source-specific permit must meet to make the permit limitations enforceable as a practical matter, including: (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping and reporting. *Id. at 6.*

45. A permit limitation that is not practically enforceable violates the federal Clean Air Act, and the Department should, therefore, deny the permit application for the Cowboy facility. *NMSA 1978, § 74-2-7.C(1)(a).*

1. The Applicant, XTO Energy, Inc., filed Application 7474M2 with the Department on June 8, 2020. *NMED Amended Exh. 34 at 3.*
2. According to the proposed permit, the Applicant would be authorized to increase emissions from the Wildcat Compressor Station of nitrogen oxides and of volatile organic compounds, among other pollutants. *21-35_AR351.*
3. The Department published the Department's legal notice for the proposed permit in the Carlsbad Current Argus on July 17, 2020, initiating a 30-day comment period. *NMED Amended Exh. 34 at 3.*
4. Guardians submitted a timely public comment letter on July 27, 2020, raising issues of concern and requesting a public hearing. *21-35_AR258-264.*
5. The Department issued a final permit for the Wildcat facility on February 26, 2021, but the Department withdrew the issuance of this permit on March 3, 2021 because it had failed to offer a second 30-day comment period on the analysis of the permit application and draft permit. *NMED Amended Exh. 34 at 4.*
6. The Department released a copy of the draft permit and the draft Statement of Basis for the proposed permit related to the Wildcat facility on March 2, 2021, initiating the second public comment period. *Id.*
7. Guardians submitted a second set of timely public comments on April 1, 2021, renewing the concerns it raised in its first comment letter, raising new concerns, and requesting a public hearing. *21-35_AR273-277.*

8. Based on the Guardians' request for a public hearing and its demonstration of significant public interest in the proposed permit, in a Public Hearing Determination dated June 1, 2021 Cabinet Secretary James Kenney granted a public hearing for XTO's Application 7474M2. *New Mexico Environment Department, Public Hearing Request Determination for WEG Related Permit Applications (Jun. 1, 2021).*
9. On June 24, 2021, the Cabinet Secretary appointed Gregory Chakalian to serve as Hearing Officer in AQB 21-35. *Notice of Hearing and Appointment of Hearing Officer, AQB 21-35 (Jun. 24, 2021).*
10. On July 7, 2021, the parties attended a virtual scheduling conference, where, among other things, the Hearing Officer determined to consolidate the public hearing regarding issues related to AQB 21-35 with nine other public hearings authorized by the Cabinet Secretary to address issues related to nine separate proposed air quality permits. *Scheduling Order, AQB 21-31 et al. (Jul. 20, 2021).*

11. At the request of the Hearing Officer, on August 2, 2021 the parties filed legal briefs addressing whether the public hearing may be held virtually. On August 6, 2021, the Hearing Officer issued an order finding that 20.2.72.306.C NMAC does not prohibit a virtual public hearing but directing the Department to provide a public space in which members of the public can view and participate in the virtual hearing. *Order Amending Scheduling Order, AQB 21-31 et al. (Aug. 6, 2021).*

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13. As part of a Joint Motion in Limine filed on October 12, 2021, the Applicant requested that the Hearing Officer preclude Guardians from offering any documents, testimony, or other evidence related to 8-hour ozone National Ambient Air Quality Standards in Eddy and Lea Counties and that any of the proposed permitting actions will necessarily “cause or contribute” to a violation of the ozone NAAQS based on the current ambient air quality in the counties. *Joint Motion in Limine, AQB 21-31 et al. (Oct. 12, 2021).*
14. On October 25, 2021, the first day of the hearing, the Hearing Officer issued an oral order granting the Applicant’s Joint Motion in Limine on the basis that “[t]he [Environment] Department has no authority or discretion to deny a permit or require offsets for an individual new or modified minor source in a designated attainment area on the basis that the facility will cause or contribute to ozone levels above the NAAQS,” (citing Final Order EIB Case No. 20-21 and 20-33), and that, therefore, testimony and evidence regarding whether the proposed permit would exceed the ozone NAAQS is irrelevant. *Day 1 Transcript at 40, 61-63.*

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20. Due to COVID-19, New Mexico has been in a declared state of emergency since March 11, 2020. *N.M. Exec. Order No. 2021-044 (Jul. 23, 2021).*
22. Partly responding to the public health emergency created by COVID-19, the Department revised and republished its legal notices for other construction permit applications, to include instructions for electronic public comment submission, but the Department did not revise and republish its legal notice for Application 7474M2. *Day 1 Transcript at 222, 224, 235.*

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27. NMED Policy 07-13 is the Department’s policy regarding public participation. *See New Mexico Environment Department, Policy 07-13: Public Participation (Feb. 6, 2018).*
28. There is no language in NMED Policy 07-13 that refers to or addresses New Mexico Executive Order 2005-056. *Id.*

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37. A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n*, 133 N.M. 97, 104.

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49. Permit limitations established in an air quality construction permit issued pursuant to an EPA-approved State Implementation Plan must be practically enforceable. *See U.S. EPA, Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits* (Jan. 25, 1995) at 5.
50. EPA guidance sets out three primary enforceability criteria which a source-specific permit must meet to make the permit limitations enforceable as a practical matter, including: (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping and reporting. *Id.* at 6.
51. A permit limitation that is not practically enforceable violates the federal Clean Air Act, and the Department should, therefore, deny the permit application for the Wildcat facility. *NMSA 1978, § 74-2-7.C(1)(a)*.

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1. The Applicant, XTO Energy, Inc., filed Application 7565M2 with the Department on March 8, 2021. *NMED Exh. 32 at 3*.
2. According to the proposed permit, the Applicant would be authorized to increase emissions from the Maverick Compressor Station of nitrogen oxides and of volatile organic compounds, among other pollutants. *21-39_AR624*.
3. The Department initially published the Department's legal notice for the proposed permit in the Carlsbad Current Argus on April 9, 2021, but it subsequently published a revised version of the legal notice in the Carlsbad Current Argus on April 20, 2021, which included instructions for how the public could submit comments electronically. Publication of the revised legal notice initiated a 30-day comment period. *NMED Exh. 32 at 4*.
4. Guardians submitted a timely public comment letter on May 20, 2021, raising issues of concern and requesting a public hearing. *21-39_AR775-780*.
5. The Department released a copy of the draft permit and the draft Statement of Basis for the proposed permit related to the Maverick facility on June 9, 2021, initiating the second public comment period. *NMED Exh. 32 at 4*.

6. Guardians submitted a second set of timely public comments on July 9, 2021, renewing the concerns it raised in its first comment letter, raising new concerns, and requesting a public hearing. [21-39_AR781-784](#).

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7. Based on the Guardians' request for a public hearing and its demonstration of significant public interest in the proposed permit, in a Public Hearing Determination dated June 1, 2021 Cabinet Secretary James Kenney granted a public hearing for XTO's Application 7565M2. [New Mexico Environment Department, Public Hearing Request Determination for WEG Related Permit Applications \(Jun. 1, 2021\)](#).
8. On June 24, 2021, the Cabinet Secretary appointed Gregory Chakalian to serve as Hearing Officer in AQB 21-39. [Notice of Hearing and Appointment of Hearing Officer, AQB 21-39 \(Jun. 24, 2021\)](#).
9. On July 7, 2021, the parties attended a virtual scheduling conference, where, among other things, the Hearing Officer determined to consolidate the public hearing regarding issues related to AQB 21-39 with nine other public hearings authorized by the Cabinet Secretary to address issues related to nine separate proposed air quality permits. [Scheduling Order, AQB 21-31 et al. \(Jul. 20, 2021\)](#).
10. At the request of the Hearing Officer, on August 2, 2021 the parties filed legal briefs addressing whether the public hearing may be held virtually. On August 6, 2021, the Hearing Officer issued an order finding that 20.2.72.306.C NMAC does not prohibit a virtual public hearing but directing the Department to provide a public space in which members of the public can view and participate in the virtual hearing. [Order Amending Scheduling Order, AQB 21-31 et al. \(Aug. 6, 2021\)](#).

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12. As part of a Joint Motion in Limine filed on October 12, 2021, the Applicant requested that the Hearing Officer preclude Guardians from offering any documents, testimony, or other evidence related to 8-hour ozone National Ambient Air Quality Standards in Eddy and Lea Counties and that any of the proposed permitting actions will necessarily "cause or contribute" to a violation of the ozone NAAQS based on the current ambient air quality in the counties. [Joint Motion in Limine, AQB 21-31 et al. \(Oct. 12, 2021\)](#).
13. On October 25, 2021, the first day of the hearing, the Hearing Officer issued an oral order granting the Applicant's Joint Motion in Limine on the basis that "[t]he [Environment] Department has no authority or discretion to deny a permit or require offsets for an individual new or modified minor source in a designated attainment area on the basis that the facility will cause or contribute to ozone levels above the NAAQS," (citing Final Order EIB Case No. 20-21 and 20-33), and that, therefore, testimony and evidence regarding whether the proposed permit would exceed the ozone NAAQS is irrelevant. [Day 1 Transcript at 40, 61-63](#).

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20. NMED Policy 07-13 is the Department's policy regarding public participation. *See New Mexico Environment Department, Policy 07-13: Public Participation (Feb. 6, 2018).*
21. There is no language in NMED Policy 07-13 that refers to or addresses New Mexico Executive Order 2005-056. *Id.*

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30. A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n*, 133 N.M. 97, 104.

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33. Permit limitations established in an air quality construction permit issued pursuant to an EPA-approved State Implementation Plan must be practically enforceable. *See U.S. EPA, Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits (Jan. 25, 1995) at 5.*
34. EPA guidance sets out three primary enforceability criteria which a source-specific permit must meet to make the permit limitations enforceable as a practical matter, including: (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping and reporting. *Id. at 6.*
36. A permit limitation that is not practically enforceable violates the federal Clean Air Act, and the Department should, therefore, deny the permit application for the Maverick facility. *NMSA 1978, § 74-2-7.C(1)(a).*

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1. The Applicant, XTO Energy, Inc., filed Application 7681M2 with the Department on March 8, 2021. *NMED Amended Exh. 23 at 2.*
2. According to the proposed permit, the Applicant would be authorized to increase emissions from the Spartan Compressor Station of nitrogen oxides and of volatile organic compounds, among other pollutants. *21-40_AR291.*
3. The Department initially published the Department's legal notice for the proposed permit in the Carlsbad Current Argus on April 8, 2021, but it subsequently published a revised version of the legal notice in the Carlsbad Current Argus on April 24, 2021, which included instructions for how the public could submit comments electronically.

Publication of the revised legal notice initiated a 30-day comment period. **NMED Amended Exh. 23 at 3.**

4. Guardians submitted a timely public comment letter on May 24, 2021, raising issues of concern and requesting a public hearing. **21-40_AR388-392.**
5. The Department released a copy of the draft permit and the draft Statement of Basis for the proposed permit related to the Spartan facility on June 10, 2021, initiating the second public comment period. **NMED Amended Exh. 23 at 3.**
6. Guardians submitted a second set of timely public comments on July 12, 2021, renewing the concerns it raised in its first comment letter, raising new concerns, and requesting a public hearing. **21-40_AR393-396.**

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7. Based on the Guardians' request for a public hearing and its demonstration of significant public interest in the proposed permit, in a Public Hearing Determination dated June 1, 2021 Cabinet Secretary James Kenney granted a public hearing for XTO's Application 7681M2. ***New Mexico Environment Department, Public Hearing Request Determination for WEG Related Permit Applications (Jun. 1, 2021).***
8. On June 24, 2021, the Cabinet Secretary appointed Gregory Chakalian to serve as Hearing Officer in AQB 21-40. **Notice of Hearing and Appointment of Hearing Officer, AQB 21-40 (Jun. 24, 2021).**
9. On July 7, 2021, the parties attended a virtual scheduling conference, where, among other things, the Hearing Officer determined to consolidate the public hearing regarding issues related to AQB 21-40 with nine other public hearings authorized by the Cabinet Secretary to address issues related to nine separate proposed air quality permits. **Scheduling Order, AQB 21-31 et al. (Jul. 20, 2021).**
10. At the request of the Hearing Officer, on August 2, 2021 the parties filed legal briefs addressing whether the public hearing may be held virtually. On August 6, 2021, the Hearing Officer issued an order finding that 20.2.72.306.C NMAC does not prohibit a virtual public hearing but directing the Department to provide a public space in which members of the public can view and participate in the virtual hearing. **Order Amending Scheduling Order, AQB 21-31 et al. (Aug. 6, 2021).**

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12. As part of a Joint Motion in Limine filed on October 12, 2021, the Applicant requested that the Hearing Officer preclude Guardians from offering any documents, testimony, or other evidence related to 8-hour ozone National Ambient Air Quality Standards in Eddy and Lea Counties and that any of the proposed permitting actions will necessarily "cause

or contribute” to a violation of the ozone NAAQS based on the current ambient air quality in the counties. *Joint Motion in Limine, AQB 21-31 et al. (Oct. 12, 2021).*

13. On October 25, 2021, the first day of the hearing, the Hearing Officer issued an oral order granting the Applicant’s Joint Motion in Limine on the basis that “[t]he [Environment] Department has no authority or discretion to deny a permit or require offsets for an individual new or modified minor source in a designated attainment area on the basis that the facility will cause or contribute to ozone levels above the NAAQS,” (citing Final Order EIB Case No. 20-21 and 20-33), and that, therefore, testimony and evidence regarding whether the proposed permit would exceed the ozone NAAQS is irrelevant. *Day 1 Transcript at 40, 61-63.*

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20. NMED Policy 07-13 is the Department’s policy regarding public participation. *See New Mexico Environment Department, Policy 07-13: Public Participation (Feb. 6, 2018).*
21. There is no language in NMED Policy 07-13 that refers to or addresses New Mexico Executive Order 2005-056. *Id.*

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30. A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm’n*, 133 N.M. 97, 104.

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33. Permit limitations established in an air quality construction permit issued pursuant to an EPA-approved State Implementation Plan must be practically enforceable. *See U.S. EPA, Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits (Jan. 25, 1995) at 5.*
34. EPA guidance sets out three primary enforceability criteria which a source-specific permit must meet to make the permit limitations enforceable as a practical matter, including: (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping and reporting. *Id. at 6.*
36. A permit limitation that is not practically enforceable violates the federal Clean Air Act, and the Department should, therefore, deny the permit application for the Spartan facility. *NMSA 1978, § 74-2-7.C(1)(a).*

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1. The Applicant, XTO Energy, Inc., filed Application 7623M2 with the Department on March 8, 2021. **NMED Amended Exh. 24 at 2.**
2. According to the proposed permit, the Applicant would be authorized to increase emissions from the Tiger Compressor Station of nitrogen oxides and of volatile organic compounds, among other pollutants. **21-41_AR292.**
3. The Department initially published the Department's legal notice for the proposed permit in the Carlsbad Current Argus on April 9, 2021, but it subsequently published a revised version of the legal notice in the Carlsbad Current Argus on April 20, 2021, which included instructions for how the public could submit comments electronically. Publication of the revised legal notice initiated a 30-day comment period. **NMED Amended Exh. 24 at 3.**
4. Guardians submitted a timely public comment letter on May 24, 2021, raising issues of concern and requesting a public hearing. **21-41_AR387-391.**
5. The Department released a copy of the draft permit and the draft Statement of Basis for the proposed permit related to the Tiger facility on June 11, 2021, initiating the second public comment period. **NMED Amended Exh. 24 at 3.**
6. Guardians submitted a second set of timely public comments on July 12, 2021, renewing the concerns it raised in its first comment letter, raising new concerns, and requesting a public hearing. **21-41_AR392-395.**

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7. Based on the Guardians' request for a public hearing and its demonstration of significant public interest in the proposed permit, in a Public Hearing Determination dated June 1, 2021 Cabinet Secretary James Kenney granted a public hearing for XTO's Application 7623M2. **New Mexico Environment Department, Public Hearing Request Determination for WEG Related Permit Applications (Jun. 1, 2021).**
8. On June 24, 2021, the Cabinet Secretary appointed Gregory Chakalian to serve as Hearing Officer in AQB 21-41. **Notice of Hearing and Appointment of Hearing Officer, AQB 21-41 (Jun. 24, 2021).**
9. On July 7, 2021, the parties attended a virtual scheduling conference, where, among other things, the Hearing Officer determined to consolidate the public hearing regarding issues related to AQB 21-41 with nine other public hearings authorized by the Cabinet Secretary to address issues related to nine separate proposed air quality permits. **Scheduling Order, AQB 21-31 et al. (Jul. 20, 2021).**
10. At the request of the Hearing Officer, on August 2, 2021 the parties filed legal briefs addressing whether the public hearing may be held virtually. On August 6, 2021, the Hearing Officer issued an order finding that 20.2.72.306.C NMAC does not prohibit a

virtual public hearing but directing the Department to provide a public space in which members of the public can view and participate in the virtual hearing. *Order Amending Scheduling Order, AQB 21-31 et al. (Aug. 6, 2021).*

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34. EPA guidance sets out three primary enforceability criteria which a source-specific permit must meet to make the permit limitations enforceable as a practical matter, including: (1) a technically accurate limitation and the portions of the source subject to

the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping and reporting. *Id.* at 6.

36. A permit limitation that is not practically enforceable violates the federal Clean Air Act, and the Department should, therefore, deny the permit application for the Tiger facility. NMSA 1978, § 74-2-7.C(1)(a).

Respectfully submitted this 17th day of December, 2021,

/s/ Matthew A. Nykiel

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CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing **ERRATA** was served on December 17, 2021 via email to the persons listed below:

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